EXHIBIT A

RESPONSE ACTION PLAN

THE NUTTING COMPANY
FARIBAULT SITE

Submitted To
Minnesota Pollution Control Agency

February 6, 1987

Prepared By
BARR ENGINEERING CO.
Minneapolis, Minnesota

INTRODUCTION

This Response Action Plan (RAP), submitted on behalf of The Nutting Company (Nutting), will specify the methods and schedules for Remedial Action (RA) at the Nutting site. Section I will summarize the design of the remedial measures and the schedule for their implementation. Section II will present a Quality Assurance Project Plan (QAPP) to be utilized during implementation and monitoring. Section III, the monitoring plan, will specify short or long-term monitoring necessary to determine the status and effectiveness of the RA's which have been implemented.

SECTION I
REMEDIAL DESIGN

As a result of the Remedial Investigation (RI) and a limited Feasibility Study (FS) of alternative remedies, a pump-out system was selected as the most cost-effective remedy for the site. The pump-out system would intercept and mitigate the identified contaminant plume in the groundwater as it leaves the Nutting property. No other remedies were determined appropriate as a result of the RI/FS. The disposal pit which is believed to be the primary source for the observed contaminant plume was previously excavated and closed in accordance with procedures approved by the MPCA. Abandonment of two unused monitoring wells is included in the closure plan.

REMEDIAL ACTIONS

The location of remedial activities is illustrated in Figure 1. In addition to two pumping wells (P-17 and P-18), a discharge system will be connected to the adjacent city storm sewer. Monitoring wells B-1 and B-2, which were temporarily abandoned in 1980 will be excavated and permanently abandoned in accordance with Minnesota Well Code.

The RI/FS determined that the most appropriate location for a pump-out system would be north of Division Street and west of Lincoln Street on property owned by Nutting. Preliminary design suggested that a single

FIGURES

TABLES

pump-out well at that location could intercept the contaminant plume leaving the Nutting property and mitigate the most significant portion of any contaminant plume which might be downgradient of the proposed pump-out well. To verify the preliminary design, a pumping test was conducted as part of final design for the pump-out system.

Pumping and Slug Tests

A pump test was conducted using Well P-17 to determine (1) the aquifer characteristics of the St. Peter Formation, (2) the pumping capacity of the well, and (3) the effects of St. Peter pumping on drawdown in the overlying drift. Well P-17 was pumped for approximately 75 hours. Water levels in the pumping well, Monitoring Wells B-15 and B-16 (drift wells) downgradient Monitoring wells B-8 (St. Peter) and W-14 (Prairie du Chien) were measured continuously, beginning prior to pumping and continuing throughout the duration of the pumping test and for two days during recovery.

Directly above the St. Peter is a coarse unit of glacial drift in which little drawdown was observed during the pumping test. The drift was apparently sufficiently transmissive to supply water to the St. Peter with few drawdown effects and the size of the capture zone of Well P-17 within the drift was uncertain. It was determined that an additional pump-out well in the drift would be necessary to guarantee capture of any contaminant plume leaving the Nutting property. In order to determine the pumping rate and well design of the second pump-out well, slug tests were conducted in drift Monitoring Wells B-15 and B-16. The permeability of the drift aquifer was estimated to be 105 feet per day in the vicinity of the pumping well.

Analysis of the drawdown and recovery data from the pump test was inconclusive as to the permeability in the St. Peter Formation. Calculated permeabilities for the St. Peter were about one order of magnitude below those commonly felt to apply to the formation and published in various studies. However, sustained pumping rates were greater than those which could be supported by the aquifer if the calculated permeability were realistic. Thus, it was concluded that there was substantial recharge to

the St. Peter from the drift which affected the calculated permeabilities. Available data was reviewed and approximate modeling techniques were applied to estimate the permeability of the St. Peter Formation. This work suggested that the published values for permeability (on the order of 20 feet per day) were applicable for design of the St. Peter pump-out well.

Pump-Out System

Figure 2 illustrates the construction of Wells P-17 and P-18. Well P-17 extends to within 3 feet of the bottom of the St. Peter formation and is screened over the bottom 30 feet of its depth. Well P17 will be continuously pumped at a rate of up to 30 gpm, to create a capture zone in the St. Peter approximately shown in Figure 1. This capture zone is similar to that anticipated in the RI/FS report. In order to obtain a similar capture zone in the glacial drift, drift pumping well P18 will be placed near St. Peter Pumping Well P17. The Drift Well P18 will be screened over the full saturated thickness of the drift and will be pumped at approximately 20 gpm to create the capture zone shown in Figure 3.

Well P17 has been, and Well P18 will be, constructed in accordance with the Minnesota Well Code. Each well is to be fitted with a pitless adapter and will discharge to Manhole A shown in Figure 3.

Wells P17 and P18 will be pumped continuously until the concentration of Trichloroethylene (TCE) in Wells B15 and B16 is reduced to 50 parts per billion (ppb) or less for two (2) successive samplings. Sampling and analysis of Wells B15 and B16 shall be in accordance with Section III, Response Action Monitoring Plan, of this RAP. A conservative interpretation of laboratory data, including quality control samples, will be utilized in determining the concentration of TCE in Wells B15 and B16. In the event that pumping is discontinued, it will be resumed if, in implementation of the monitoring plan, the concentrations of TCE in Wells B15 and B16 are found to exceed 50 ppb. During periods when pumping is discontinued, the monitoring schedule will be as shown in Section III of this RAP, or as subsequently approved by MPCA.

Discharge System

From Manhole A the discharge is piped by gravity to the catch basin located in the northwest quadrant of the intersection of Lincoln Avenue and Division Street (see Figure 3). From the catch basin the discharge will flow approximately three blocks west along Division Street to Old Trunk Highway 65 where it discharges to Crocker's Creek and flows north to the Cannon River, an additional distance of approximately 3/4 mile. The discharge route is shown in Figure 4. During the pumping test, concentrations of volatile organic contaminants were on the order of 20 ppb. This is far below the level at which contaminants would present any risk due to volatilization or physical contact; therefore, no treatment is planned. However, to encourage aeration in the discharge line, the connection between Manhole A and the city catch basin will be constructed of 8-inch diameter corrugated metal pipe to assure turbulent flow in the discharge line. In the unlikely event that future concentrations of volatile contaminants in the discharge water would require further aeration of the discharge, a false bottom will be provided in Manhole A which would facilitate installation of an aeration system.

Closure Plan

Monitoring Wells B-1 and B-2 were temporarily abandoned following excavation of sludges from the disposal pit in 1980. Both wells are constructed of 1 1/2-inch PVC and extend into the St. Peter Formation adjacent to the old disposal pit. Since the drift and St. Peter aquifers are not considered separate units in this area, it is proposed to permanently abandon both wells by backfilling with a fine sand and bentonite mixture.

Except for the abandonment of monitoring Well B-1 and B-2 no additional closure activities are necessary. Past closure activities for the disposal pit area are considered to be complete and adequate in their present form.

All existing monitoring wells will be maintained until the MPCA grants approval for abandonment. The annual monitoring report to the MPCA (see Section III, Response Action Monitoring Plan) will recommend wells for abandonment. When such approval is granted and the monitoring wells are abandoned, they will be abandoned in conformance with the Minnesota Well Code.

SCHEDULE

Table 1 illustrates the proposed schedule of Remedial Actions. Weather permitting, it is desired to complete these actions at the earliest possible date to assure that the contaminant plume is controlled to the greatest degree possible. Abandonment of monitoring Wells B-1 and B-2 can be deferred until warmer weather.

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TABLE 1

SCHEDULE OF REMEDIAL ACTIONS

Task	Completion Time weeks after MPCA approval*
Construct Pump-Out Well P17	Complete
Construct Pump-Out Well P18	4 weeks
Connection to Storm Sewer System	4 weeks
Abandon Monitoring Wells B1, B2	26 weeks
Restoration, Seeding	26 weeks

*Including NPDES permit issuance.

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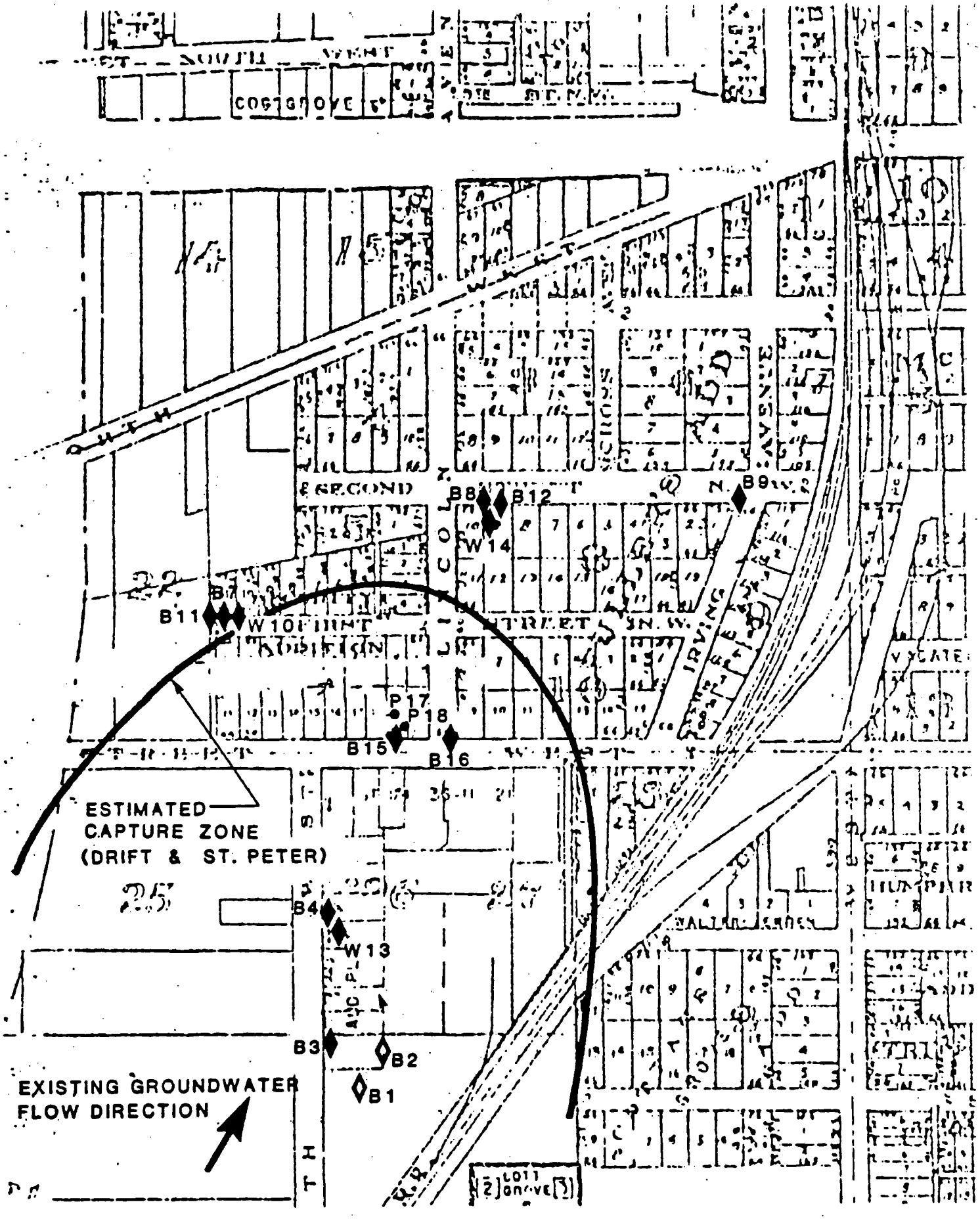


Figure 1

MONITORING WELLS AND REMEDIAL ACTIONS
RESPONSE ACTION PLAN
THE NUTTING COMPANY

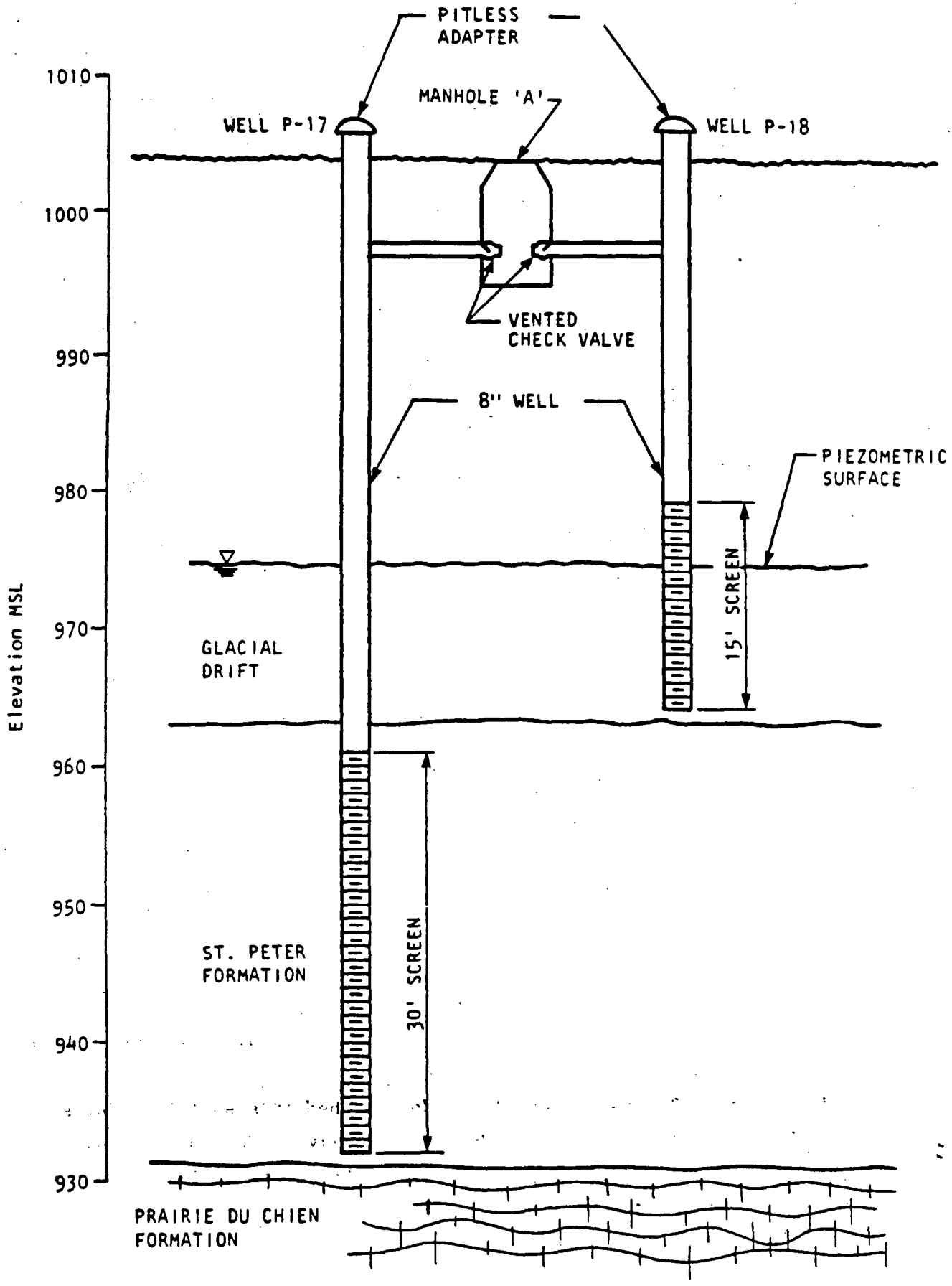


Figure 2

PUMPOUT WELL CONSTRUCTION
RESPONSE ACTION PLAN
THE NUTTING COMPANY

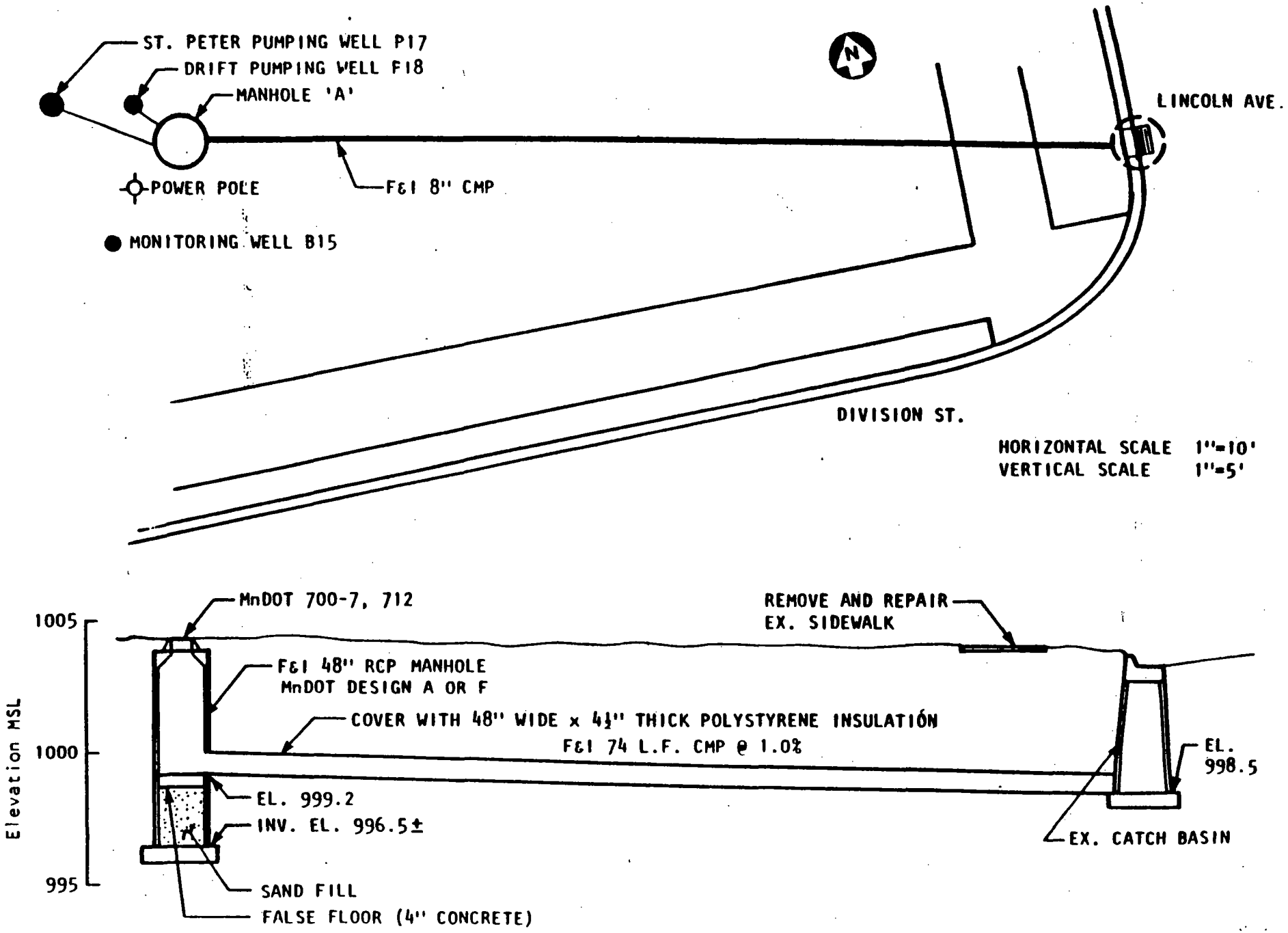
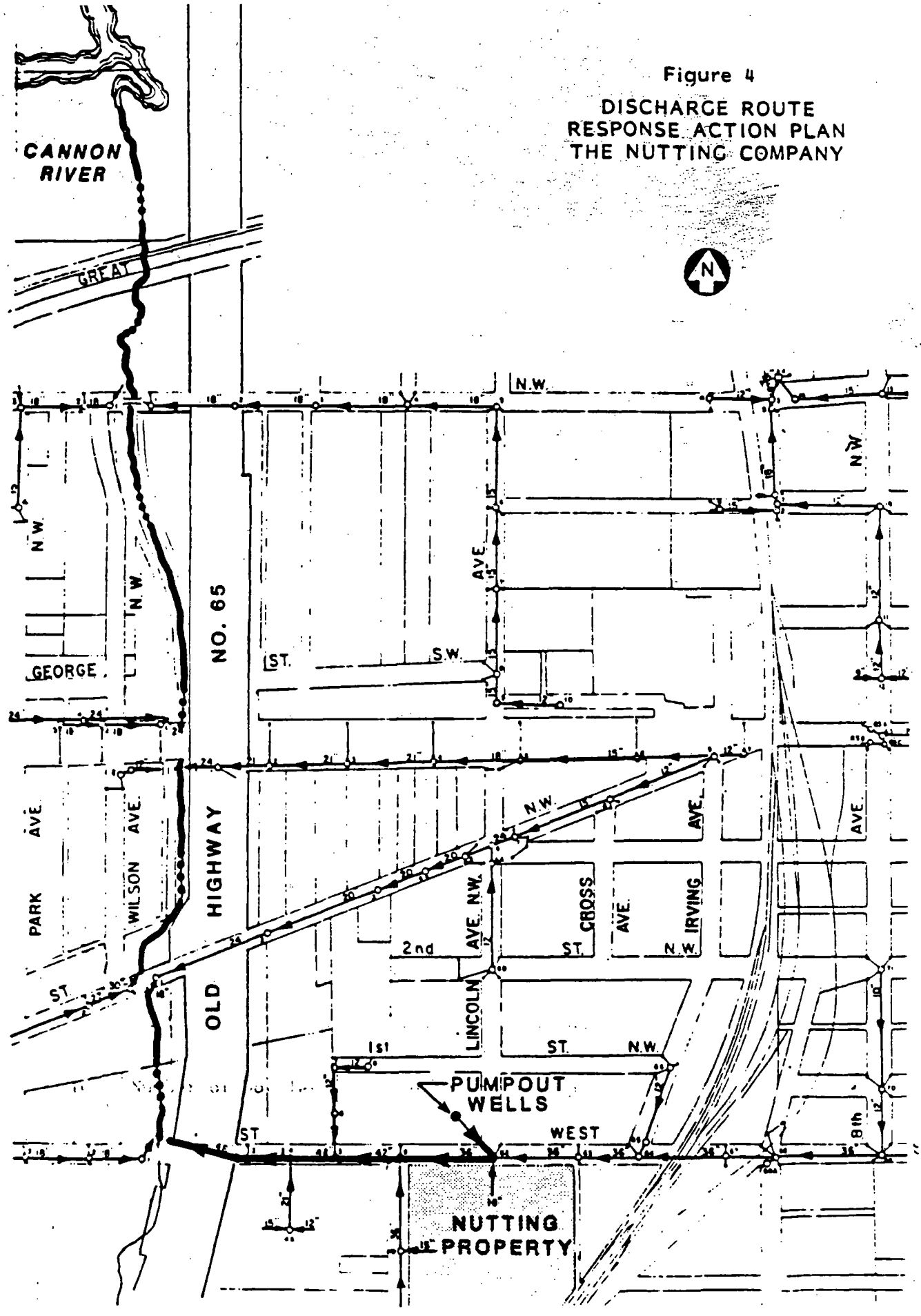


Figure 3

PUMPOUT DISCHARGE CONNECTION
RESPONSE ACTION PLAN
THE NUTTING CO.

Figure 4

DISCHARGE ROUTE
RESPONSE ACTION PLAN
THE NUTTING COMPANY



SECTION II
QUALITY ASSURANCE PROGRAM PLAN

PROJECT DESCRIPTION

A quality assurance program plan (QAPP) is required as part of the RAP for the Nutting site in Faribault, Minnesota. The QAPP describes the procedures for collecting and analyzing water samples as part of the monitoring for the site. The purpose of monitoring is to evaluate the effectiveness of the pump-out system.

PROJECT ORGANIZATION AND RESPONSIBILITY

Barr Engineering Co. will be responsible for the design of the monitoring wells and pump-out system and the collection of the water samples. PACE Laboratories will be responsible for the analysis of the water samples.

QUALITY ASSURANCE OBJECTIVES FOR MEASUREMENT OF DATA IN TERMS OF PRECISION, ACCURACY, COMPLETENESS, REPRESENTATIVENESS, AND COMPARABILITY

The water samples will be analyzed for the volatile organic compounds listed on Table 2. The method of analysis will be EPA 601.

The goals of accuracy, precision, and completeness for the sample data are the same for all parameters. Accuracy is acceptable as long as the laboratory internal quality control and audit samples show the analytical results to be within the 95 percent confidence limits. The precision is evaluated by computing an average coefficient of variation for the masked duplicate samples. If this average coefficient of variation exceeds 25 percent, the data is considered unreliable and is footnoted as such when published. The completeness of the data is acceptable if satisfactory results are obtained for 90 percent of the samples.

SAMPLING PROCEDURES

Sampling Order

A sampling order will be established prior to sampling and observed during collection of samples. Monitoring wells will be sampled in order of clean to dirty.

Sample Collection

The following methods will be used to obtain samples. The sampler will wear new clean disposable gloves at each sampling station. The fewest possible number of people will handle the sample.

Prior to sampling a monitoring well, the depth to water from the top of the riser pipe will be measured to the nearest 0.1 of a foot. Monitoring wells will be purged prior to sampling using a centrifugal pump or bailers.

Pump inlets will be constructed of stainless steel or teflon. Stainless steel bailers with bottom filling teflon check valves or teflon bailers with bottom filling check valves will be used in collecting samples.

Stabilization tests will be conducted while purging a well. A well stabilization record form is given in Attachment 1. Specific conductance, pH, and temperature will be measured in the field at one well volume intervals until three successive readings yield equivalent values within the following range for each parameter:

- Specific Conductance: (temperature corrected)	0-500 scale ±10 umhos/cm 500-5000 scale ±10 umhos/cm
- pH	±0.1 pH units
- Temperature	±0.5°C

A minimum of five well volumes will be removed from the well during a stabilization test. If a pumped well has not stabilized after 50 volumes have been removed or 30 minutes of purging and the well stabilization readings do not demonstrate a trend (slowly rising or falling pH, temperature or conductance), stabilization will be discontinued and the samples will be collected.

Samples will be collected using a bailer with stainless steel wire. The wire will be on a downrigger to prevent contact with the ground. Each specially prepared bailer will only be used to collect samples from one well.

Pumps, suction hoses, and tubing will be cleaned with soap and water and rinsed with tap water prior to use.

Each bailer will be cleaned in the laboratory prior to use by washing with soap and water and rinsing sequentially with tap water and distilled water. The bailers will be baked at 103° for at least one hour. The bailers will be transported to the field wrapped in aluminum foil with the shiny side out. Each specially prepared bailer will only be used to collect the samples from one well or surface water station before being returned to the laboratory for cleaning according to the previously described procedure.

The pump-out wells will be sampled at the sampling ports in Manhole A, which is shown on Figure 2. Because the pump-out wells are continuously being purged, no stabilization tests will be done before sample collection.

Sample Packaging

Volatile organic samples will be collected in septum vials. No head (air) space is left in the sample vial. If headspace is found in a vial, the vial is discarded and a replacement is collected. After the volatile organic samples have been collected, the septum vials will be individually wrapped in aluminum foil and sealed as sample sets in Ziploc plastic bags.

Three to five vials will be filled at each sampling station. Sample labels are filled out with pencil.

The volatile organic vials will be prepared by washing the vials with soap and water, rinsing with tap water, distilled water and baking in a muffle furnace at a temperature not less than 450°C for at least 60 minutes. The vials will be cooled in a desiccator over a bed of activated carbon prior to capping. The septums will be placed with teflon side facing up on a sheet of aluminum foil with the dull side of the foil facing up and baked at a temperature not less than 200°C for at least one hour. The septums will be collected in a desiccator over a bed of activated carbon prior to assembling. The vials, caps and septums will be assembled in a low solvent environment. The vials will be wrapped in aluminum foil with the shiny side out.

The following instruments or their equivalent will be used for analyses in the field:

1. Orion Research Model 407A pH Meter
2. YSI Model 33 Specific Conductance & Temperature Meter

Safety equipment necessary to meet the requirements of the site safety plan will be used on the job site. Safety gear consists of dermal protection.

CHAIN OF CUSTODY

Field Chain of Custody

Sample Identification

A label will be attached to each sample container before the sample is collected. The label will contain the sampling station identification, date taken, project name, and sampler's initials. Labels will be legible and completed in graphite pencil.

Field Logs

A field log will be maintained throughout the program. Field measurements and other pertinent information about field activities will be recorded. The Field Log Cover sheet is shown in Attachment 2. The Field Log Data sheet is shown in Attachment 3.

Chain of Custody

The field sampler will be responsible for custody of samples until they are properly dispatched to the laboratory or turned over to an assigned custodian. The field sampler will ensure that possession or sight of sample containers is maintained at all times or that the containers are stored in a securely locked area. A chain of custody form is shown in Attachment 4.

The chain of custody procedures will apply to all samples collected. All entries will be completed in indelible ink. The original chain of custody record will be sealed in a waterproof container and shipped inside the sealed transportation case. A copy of the record will be retained by the sampling team.

Photo Documentation

Color slides or photographs will be taken to show all sampling locations once per year. Written documentation on the photographic record will include photographer's initials, project name, date and sampling site.

Laboratory Chain of Custody

Control of Incoming Samples

PACE Laboratories, Inc. has a sample custodian whose primary responsibility is to document receipt of samples, initiate the appropriate log-in procedures described below, assure proper documentation and prompt

analyses of the samples. He also maintains proper custody of samples and analytical data to verify the integrity of reports submitted to our clients.

When samples are received at the laboratory and they are accompanied by a chain of custody form, the sample custodian will initiate the following steps:

1. Verify that each sample was in the packing container as recorded on the chain of custody record.

2. Document on the Chain of Custody form any breaking of seal or sample bottles which may have occurred during transport to the laboratory.

3. If all data and samples are correct, sign and date the "received at laboratory by" box. The exact number of sample containers received by the laboratory is recorded for each sample.

All samples received by PACE Laboratories, Inc. are identified and labeled showing the name of the client, sample location or code, date received and the preservative added to the bottle. Samples are entered into the log book which contains the following:

1. A number assigned to each sample. Numbers begin with 1 on the first day of the year.

2. Identification of the client by name.

3. Date the sample was received at the laboratory.

4. Number of bottles received for each sample.

5. Initial of person who checked in samples.

Next, a sample check-in sheet is filled out. This sheet contains all pertinent information about the client, sample collection, sample matrix, analyses to be performed and number of bottles received. To complete the check-in procedure, the samples name is entered on each data sheet corresponding to the parameter to be analyzed. Each raw data sheet contains all the data necessary to perform the calculations for the final results. There is also a "comments" section that allows for special instruction in sample analysis or for observations made during analysis that may impact the final result. Before samples are stored, they are rechecked to make sure they are in the correct container and are properly preserved.

Maintenance of Custody

PACE Laboratories, Inc. has implemented standard operating procedures to assure the integrity of both sample and data so that they are not degraded or disclosed to unauthorized personnel. In order to ensure that this policy is maintained, the laboratory facilities are under controlled access. Only employees of PACE Laboratories, Inc. are allowed access to the laboratory facilities. Unauthorized personnel must register at the front desk and obtain a visitors badge prior to entering the laboratory. Visitors are accompanied at all times when in the laboratory by an employee of PACE Laboratories, Inc. The building is locked and secured at the end of each working day. Keys to the building are issued only to select personnel. Samples are stored either in a large walk-in cooler at $4^{\circ}C$, at room temperature or in ventilated hazardous waste cabinets. The walk-in coolers and hazardous waste cabinets have locks and are secured at the end of each working day by the sample custodian.

Samples are removed from their proper storage location by the analyst and are returned to the storage area immediately after the required sample volume has been taken. This minimizes unnecessary time spent searching for samples and helps prevent matrix degradation from prolonged exposure to room temperature.

Samples remain in their original locations until the report is completed. Then they are removed and stored at room temperature for four weeks after the report is sent. If there are no questions concerning the results or no further analyses are requested, after this time, the samples are properly discarded.

CALIBRATION PROCEDURES AND FREQUENCY

Initial Demonstration Laboratory Capability

To demonstrate the capability of the laboratory to generate valid data, the following steps need to be performed:

1. A spike solution containing the parameters to be tested is prepared in an appropriate solvent at a concentration level 1,000 times greater than the analyses range. The concentration of the spike solution is selected so that it will yield samples that are spiked at least 2* the detection level.

2. The spike solution is diluted a thousand fold into reagent water and at least seven replicates are carried though the analyses.

3. The average percent spike recovery (R) and the standard deviation percent (s) are calculated for the replicates.

4. If additional spiked replicates are analyzed at several concentration levels, the average percent recovery (R) and standard deviation percent(s) for these are also calculated.

5. The calculated R and s values are compared to EPA literature and/or any other literature values available.

6. The upper and lower control limits are calculated at $\pm 3 * S$.

7. The upper and lower control limits and the average percent recovery are utilized to construct control chart for the ongoing quality control.

8. The method detection limit is calculated.

   a. Seven replicates prepared in blank water at 1 to 5 times the estimated detection limit are analyzed.

   b. The variance (S^2) and standard deviation (S) of the replicate are calculated as follows:

$$S^2 = \frac{1}{n-1}\left[\sum_{i=1}^{n} x_i^2 - \left\{\frac{\sum_{i=1}^{n} x_i}{n}\right\}^2\right]$$

$$S = \left[S^2\right]^{1/2}$$

   where the X_i, i=1 to n are the analytical results obtained from n samples and ΣX_i^2 refers to the sum of the x values from i=1 to n.

   c. The method detection limit (MDL) is computed as follows:

$$MDL = t(n-1, 1-a = .99) * S$$

t=STUDENTS T VALUES AT 99% CONFIDENCE LEVEL

Number of Replicates	Degrees of Freedom (n-1)	t(n-1,1-a=.99)
7	6	3.143
8	7	2.998
9	8	2.896
10	9	2.821
11	10	2.764

16	15	2.602
21	20	2.528
26	25	2.485
31	30	2.457
61	60	2.390
infinity	infinity	2.326

d. The 95 percent limits are calculated as follows:

$$MDL_{lcl} = 0.69\ MDL$$
$$MDL_{ucl} = 1.92\ MDL$$

where MDL_{ucl} and MDL_{lcl} are the upper and lower 95 percent confidence limits based on seven replicates.

9. Any changes in lab preparation or chromatography that may effect the recovery, cleanup or detection of the compounds requires that this entire section be repeated.

Ongoing Program of Analysis of Spikes, Duplicates and Outside Reference Samples

1. At least 10 percent of all laboratory samples or one per month must be collected in duplicate, spiked and analyzed for the parameters of interest.

2. At least 10 percent of all lab samples or one per month must be collected in duplicate and analyzed for the parameters of interest.

3. The recoveries must be plotted on QC charts which have UCL and LCL limits on them.

4. If the results fall outside those levels, a laboratory out of control (LOC) situation exists.

5. The problem is then identified, corrected, and documented in the LOC notebook.

6. When utilizing liquid extraction methods, one method blank must be analyzed per set or when reagents are changed, to demonstrate that interferences in the system are under control;.

7. For purge and trap, a method blank must be analyzed each day to demonstrate that interferences in the system are under control.

8. Outside reference samples are processed through the total procedure at least once per quarter.

9. When doubt exists as to the identification of a compound, confirmation work is done by a different column, different detector, or mass spectrometer to verify results.

Daily Calibration

Initially, the calibration is performed at three levels with the lowest concentration near the MDL. The response factors of the calibration curve are recorded. The daily response factors are checked against the calibration each day an analyses is run.

1. On a daily basis, a single concentration of a standard is analyzed and the response factor must agree within 10 percent of the calibration curve. If not, the standard is remade or a new three level calibration curve is prepared.

2. Each day the calibration standard is verified by analyses of an additional outside standard such as an EPA concentrate.

LABORATORY ANALYTICAL METHODS

The volatile organic compounds will be analyzed using EPA 601 with a Hall detector. The analytical procedures for this method are similar to EPA Method 502.1.

DATA REDUCTION, VALIDATION AND REPORTING

The data reduction scheme for field data is described in Sampling Procedures and for laboratory data in Calibration Procedures and Frequency. The criteria for validating data integrity will be done within the laboratory using procedures described in Calibration Procedures and Frequency. In addition blank samples will be collected and analyzed along with each group of samples submitted to the laboratory. The blank samples will serve as a check of the bottle cleaning procedures and the sample handling techniques. During the collection of the groundwater samples, the bailers will also be checked for visible contamination.

Blanks will be prepared for each sampling trip. Data on the blank samples will be included in the reports.

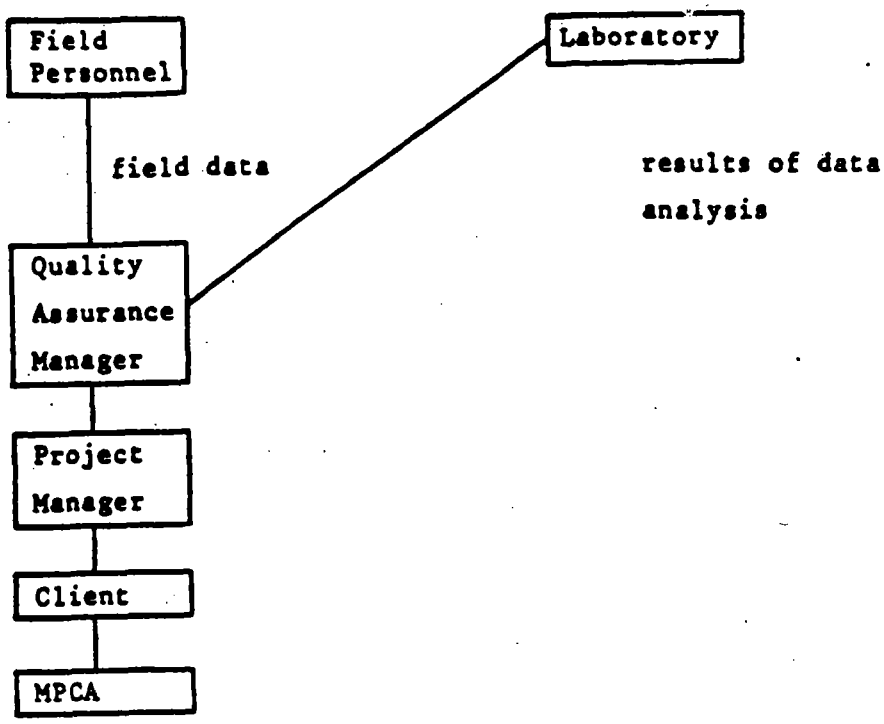
A blind duplicate water sample will be collected from a randomly selected station.

The criteria for identifying and treating outliers is described in Quality Assurance Objectives. The average coefficient of variation will be computed using the formula:

$$C.V. = \left\{ \sum_{i=1}^{n} \frac{R_i}{X_i}^2 \Big/ 2n \right\}^{\frac{1}{2}}$$

where C.V. is the coefficient of variation, n is the number of parameters in the analysis, R_i is the difference of duplicate pair, and X_i is the means of duplicated pair.

The data flow is shown in the flow chart below:



INTERNAL QUALITY CONTROL CHECKS

Internal quality control checks are described in Sampling Procedures and Calibration Procedures and Frequency.

PERFORMANCE AND SYSTEM AUDITS

The QAM conducts performance and system audits on work by PACE Laboratories on a continuing basis. The results of the audits are discussed as problems occur and general issues are discussed at quarterly meetings.

PACE Laboratories conducts internal audits and participates in the EPA audit program for laboratories for the compounds in this study.

PREVENTIVE MAINTENANCE

The instrumentation and equipment used are regularly evaluated to ensure proper operating condition and performance.

Traps and columns are replaced as necessary based on the statistical evaluation of the standards and spiked samples. The lamp in the PID is replaced when the RF does not fall within an acceptable range.

SPECIFIC ROUTINE PROCEDURES USED TO ASSESS DATA PRECISION, ACCURACY AND COMPLETENESS

Routines for accuracy are described in Calibration Procedures and Frequency. Routines for precision are described in Data Reduction, Validation and Reporting. Routines for completeness are described in Quality Assurance Objectives.

CORRECTIVE ACTION

When the QC data indicate that the concentration of the check sample falls outside the accepted range or the standard deviation exceeds the acceptance criteria, the source of the problem is located and corrected. Two examples of problems and corrective actions are:

1. If the standard data has a response below the accepted range, the standards and spikes are rerun. If the problem persists after the rerun, new solutions for standards and spikes are prepared and analyzed. The system is checked for leaks and the PID lamp may be replaced.

2. If the baseline has noise or other irregularities, the spargers are cleaned, the purge and trap is checked and replaced. The gas chromatography column is checked and replaced if necessary.

After finding and correcting the problem, the RF is recalculated and the QC check sample re-analyzed.

QUALITY ASSURANCE REPORT

The quality assurance performance will be addressed in the Annual Monitoring report to the MPCA.

RAPNUT/332,0

SECTION III

RESPONSE ACTION MONITORING PLAN

This section of the Remedial Action Plan will describe continuing groundwater monitoring including parameters to be analyzed, analysis procedures to be used, wells to be monitored, frequency of monitoring, and reporting of data.

The samples will be analyzed for the volatile organic compounds (VOC) listed on Table 2 using EPA Method 601 except as noted below. During the first year, samples will be collected four times annually from B15, B16, P17 and P18 and semi-annually from B4, B8, B12, W13, and W14. Once annually, the samples from B15, B16, P17 and P18 will be analyzed using EPA Method 601 and 602 for a complete VOC scan. Other samples will be taken to comply with NPDES permit requirements. Water level elevations will be measured at selected wells as necessary four times per year. The frequency of monitoring may be adjusted after the first year, subject to MPCA approval.

Quarterly reports will be submitted to the MPCA on the tenth day of the first month of the quarter, or as soon thereafter as laboratory data is received for all samples. The quarterly reports will contain lab reports and water elevation data for sampling performed in the previous quarter.

An annual report will be submitted to the MPCA during January. This report will contain summaries of the water quality and water elevation data collected in the year. This data will be presented on tables with data from previous years and on maps showing geographical distribution of the plume. An evaluation of the effect of the pump-out system will be included in the annual report as will recommendations for the next year of monitoring, including modifications in the wells to be monitored and the frequency of monitoring. Monitoring schedules for subsequent years will be subject to MPCA approval and approved changes to the NPDES permit. The report will also include any recommendations for modifications to, or abandonment of, the monitoring or remedial systems.

RAPNUT/332,0

Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
Site Response Section

Board Action Sheet

Board Date: 9/22/87

Project Manager: Frank Wallner/Sandra Forest Date: 9/22/87

Board Agenda Title: Request for Approval of a Response Order by Consent between the MPCA and the Nutting Company Regarding Ground Water Contamination Associated with the Nutting Truck & Caster Hazardous Waste Site, Faribault, Rice County.

Board Action:

Approved as presented: ✓ Denied _____

Approved with the following changes: _____ (See attached resolution)

Tabled: Yes _____ No _____ If yes, until when? _____

Signed: Sandra J. Forest Dated: 9/22/87

IT IS SO AGREED:

By_____ _____
The Nutting Company Date

_____ _____
Chairperson, Minnesota Pollution Control Agency Date

_____ _____
Commissioner, Minnesota Pollution Control Agency Date

have been one or more releases and continue to be threatened releases, within the meaning of Minn. Stat. § 115B.02, Subd. 15, of these hazardous substances from the Nutting Site; (4) with respect to those releases, The Nutting Company (Nutting) is a responsible person within the meaning of Minn. Stat. § 115B.03; (5) the actions to be taken pursuant to this Order are reasonable and necessary to protect the public health or welfare or the environment; and (6) the time periods for beginning and completing the actions required by this order are reasonable.

II.

Parties

This Order shall apply to and be binding upon the following parties:

A. The Nutting Company; and,

B. The Minnesota Pollution Control Agency.

III.

Statement of Facts

For purposes of this Order, the following constitutes a summary of the facts upon which this Order is based. None of the facts related herein shall be considered admissions by either party with respect to any claims unrelated to or persons not a party to this Order.

A. The Nutting Site is located at 1221 West Division Street in Faribault, Minnesota. A map of the Nutting Site is attached as Attachment 1.

B. The Nutting Site is listed on the National Priority List with a Hazard Ranking System score of 38.

C. Nutting produced a variety of hand carts and caster wheels over the past 94 years at its plant in Faribault. The manufacture of these products lead to the generation of waste solvents.

D. Beginning in 1959 Nutting began disposing of waste materials, including waste solvents, in a disposal pit located on the southern tip of the Nutting property. In response to a 1979 notice of non-compliance, Nutting excavated the contents of the pit, backfilled the pit with clean fill, and capped the area with an impervious material thereby removing the main source of ground water contamination.

E. Samples collected by Nutting at the time of the excavation confirmed that releases from the pit to the ground water are from the Nutting facility. The ground water is contaminated primarily by 1,1,2 trichloroethylene (TCE), and to a lessor extent by cadmium, lead, chromium, methylene chloride, and xylene. TCE in ground water was detected at concentrations of up to 570 parts per billion (ppb), and is the main contaminant of concern.

F. Beginning in 1982, analysis of Faribault municipal water supply wells confirmed the presence of TCE. This discovery led MPCA staff to place a high priority on defining the extent and magnitude of contaminated ground water originating from the Nutting property and other sources.

G. On September 27, 1983 a Request for Response Action (RFRA) was issued to Nutting, and on April 26, 1984 a Consent Order (Order) was executed which required Nutting to conduct a Remedial Investigation (RI) to assess the extent and magnitude of ground water contamination, to determine whether the Nutting Site contributed to contamination of the Faribault municipal water supply wells and to reimburse the MPCA for its expenses. Nutting has fully completed its obligations under the April 26, 1984 Order.

H. The April 26, 1984 Consent Order required the Nutting Company to conduct additional remedial investigations to determine the extent of contamination originating from the Company's property and to determine whether the Company was or was not the source of trichloroethylene and other hazardous substances detected in the Faribault municipal wells beginning in 1982. Nutting submitted a RI Final Report, the data from which indicates that contamination from the Nutting property is not the source of TCE or other hazardous substances measured at the Faribault municipal water supply wells. The RI concluded that response actions are needed to mitigate localized TCE ground water contamination. The RI Final Report was approved by the MPCA Commissioner by letter dated October 15, 1986.

I. Nutting submitted a Feasibility Study (FS) which analyzed alternative remedies and documents selection of a ground water pump out system as the most appropriate response action.

J. On February 6, 1987 Nutting submitted a proposed Response Action Plan (RAP) which details the installation and operation of the ground water pump out system. The MPCA approved the RAP on March 24, 1987.

IV.

Definitions

Unless otherwise explicitly stated, the definitions provided in Minn. Stat. Ch. 115B shall control the meaning of the terms used in this Order.

V.

Scope of Order

This Order shall govern the following matters:

A. Implementation of Response Actions as described in Part VI and Exhibit A to this Order; and

B. Reimbursement of the MPCA's costs.

These matters are set forth in more specific detail in Parts VI and XX, and Exhibit A to this Order. In the event of any ambiguity or inconsistency between Parts VI and XX and Exhibit A to this Order, the Exhibit shall govern.

Matters other than those described above are not within the scope of this Order.

VI.

Response Action Implementation

Nutting shall implement the Response Action (RA) in accordance with the requirements and time schedules set forth in

Exhibit A to this Order. Exhibit A is appended to and made an integral and enforceable part of this Order. The purpose of implementing the selected RA is to abate or minimize the release or threatened release of hazardous substances associated with the Nutting Site.

VII.

Review and Approval of Submittals

The review of each submittal, document, report, or schedule (collectively referred to hereafter as "Submittal") which is required to be submitted to and reviewed by the MPCA Commissioner shall be as follows:

A. The MPCA Commissioner shall review each Submittal made by Nutting as required by this Order within thirty (30) calendar days of receipt and notify Nutting in writing by the thirty-first calendar day, or the first working day thereafter, of his approval, disapproval, or modification of the Submittal. In the event the Submittal is approved, it shall become an integral and enforceable part of this Order. In the event the Submittal is disapproved in whole or part, the MPCA Commissioner shall notify Nutting and shall state the necessary amendments or revisions and the reasons therefor. In the event that the Submittal is modified, the MPCA Commissioner shall notify Nutting of the specific modification(s) made to the Submittal and the reason(s) therefor.

B. Within twenty-one (21) calendar days of receipt of any notice of disapproval or modification, or on the first working day thereafter, Nutting shall (1) submit revisions to correct inadequacies, (2) respond to the modifications or (3) state in writing the reasons why the Submittal, as originally submitted, should be approved.

C. If, within twenty-one (21) calendar days from the date of Nutting's submission under paragraph B, above, or the first working day thereafter, the parties have not reconciled all issues with respect to the Submittal, the MPCA Commissioner shall make final modifications of the Submittal as he deems necessary. Subject to the provisions of Part VIII, final modifications made by the MPCA Commissioner shall become integral and enforceable parts of this Order.

D. All Submittals or modifications thereto shall be technologically feasible and in accordance with sound engineering practices.

E. The MPCA and Nutting shall provide the opportunity to consult with each other during the review of Submittals or modifications.

F. In reviewing all Submittals, making any final modifications or issuing any order under Part VIII the MPCA shall comply with the requirements of Minn. Stat. § 116.07, Subd. 6 (1984).

VIII.

Resolution of Disputes

If a dispute arises as to any part of this Order, including any final modification or disapproval of Submittals, the procedures of this Part shall apply. In addition, during the pendency of any dispute, Nutting shall continue to implement those portions of the RA which the MPCA Commissioner determines can be reasonably implemented pending final resolution of the issue(s) in dispute.

A. Nutting shall, within twenty-one (21) days of the date of the MPCA action which lead to the dispute, provide the MPCA Commissioner with a written statement setting forth the information Nutting is relying upon to support its position.

B. Following receipt of Nutting's statement under paragraph A, the MPCA Commissioner shall issue an order with respect to the issue(s) in dispute.

C. Nutting shall, within fourteen (14) days of the date of issuance of the MPCA Commissioner's order, notify the MPCA Commissioner whether Nutting intends to comply with the MPCA Commissioner's order. In the event that Nutting does not notify the MPCA Commissioner within fourteen (14) days of the date of issuance of the MPCA Commissioner's order, Nutting's failure shall be construed as a waiver of its right to challenge the order, in such an event, the MPCA Commissioner's order shall become an integral and enforceable part of this order.

D. If, within fourteen (14) days of date of issuance of the MPCA Commissioner's order, Nutting notifies the MPCA Commissioner that it does not intend to comply with the MPCA Commissioner's order, the MPCA shall, within forty-five (45) days of the date that Nutting's notice was received, notify Nutting as to whether the MPCA intends to do any work which Nutting has notified the MPCA it will not undertake during the pendency of the dispute or which is in dispute.

E. If the MPCA elects to do any work pending resolution of the dispute, the MPCA may seek to recover any reasonable and necessary expenses incurred by the MPCA as provided by Minn. Stat. § 115B.17, Subd. 6 (1984). If the MPCA elects to do any work, there shall be no preenforcement review of the dispute and review of the issue(s) in dispute shall be limited to any cost recovery action which may be brought by the MPCA under Minn. Stat. § 115B.17, Subd. 6 (1984).

F. If the MPCA elects to not do any work required by this Order during the pendency of a dispute, Nutting may bring an action challenging the MPCA Director's order. Any such action must be brought within thirty (30) days of receiving notice that the MPCA does not intend to do the work required by this Order. Review of the MPCA Director's order shall be a de novo proceeding, although it is understood that Nutting shall not challenge the contractual nature of this Order. If Nutting does not file an action challenging the MPCA Director's order within the allotted

time period, Nutting's failure shall be construed as a waiver of its right to seek de novo court review and the MPCA Director's order shall become an integral and enforceable part of this Order.

IX.

Permits

A. The implementation of this Order may require the issuance of governmental permits, authorizations or orders (hereinafter referred to as "permit") by the MPCA, other State agencies, or other governmental bodies. This Order is based upon the expectation that the terms and conditions of any necessary permits will be issued consistent with the response actions required by this Order.

B. Nutting shall notify the MPCA Commissioner of all non-MPCA permits which are needed to implement the requirements of this Order as soon as Nutting becomes aware of the need for the permit. Nutting shall provide the MPCA Commissioner with a copy of all such permit applications at the time the application is submitted to the governmental body issuing the permit.

C. If a permit is not issued, or is issued or is renewed in a manner which is materially inconsistent with the requirements of the approved RAP or RA(s), Nutting shall notify the MPCA Commissioner of its intention to propose modifications to the RAP or RA(s). Notification by Nutting of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by Nutting of notification that (1) a permit will

not be issued; (2) a permit has been issued or reissued; or (3) a final judicial determination with respect to issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention, Nutting shall submit to the MPCA Commissioner its proposed modifications to the RAP or RA(s) with an explanation of its reasons in support thereof.

D. The MPCA Commissioner shall review and approve, disapprove or modify Nutting's proposed modifications to the RAP or RA(s) in accordance with Part VII of this Order. If Nutting submits proposed modifications prior to a final judical determination of any appeal taken on a permit needed to implement this Order, the MPCA Commissioner may elect to delay review of the proposed modifications until after such final judicial determination is entered. If the MPCA Commissioner elects to delay review, Nutting shall continue implementation of this Order as provided in Paragraph E of this Part.

E. During any judicial review of any permit needed to implement this Order or during review of any of Nutting's proposed modifications as provided in Paragraph D above, and during any subsequent judicial proceedings taken in accordance with the provisions of Part VIII, Nutting shall continue to implement those portions of the RA(s) which the MPCA Commissioner determined can be reasonably implemented pending final resolution of the judicial proceedings.

X.

Creation or Danger

In the event the MPCA Commissioner determines that activities undertaken in implementing or in non-compliance with this Order, or any other circumstances or activities, are creating a danger to the health or welfare of the people on the Nutting Site or in the surrounding area or to the environment, the MPCA Commissioner may order Nutting to stop further implementation of this Order for such period of time as needed to abate the danger or may petition a court of appropriate jurisdiction for such an order.

XI.

Reporting

Nutting shall submit to the MPCA Commissioner written progress reports which describe the actions Nutting has taken during the previous three months (quarter) to implement the requirements of this Order. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted within ten days from the end of each quarter. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in Exhibit A to this Order are being met. Nutting shall indicate and propose in the quarterly reports any additional activities it believes to be necessary which are not included in the approved RAP and shall describe the impact of the

additional activities on the other activities conducted pursuant to this Order. The MPCA Commissioner may, in his discretion, direct that reports be submitted at extended intervals or that no further reports be submitted.

XII.

Notification

Unless otherwise specified, progress reports and any other Submittals made by Nutting pursuant to this Order shall be sent by certified mail, return receipt requested and addressed or hand delivered to:

Frank X. Wallner, Project Manager
Division of Solid and Hazardous Waste
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Documents sent to Nutting shall be addressed as follows unless Nutting specifies otherwise:

Mr. Stewart Shaft
The Nutting Company
840 Hidden Valley
Watertown, South Dakota 57201

Becky A. Comstock
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, Minnesota 55402

XIII.

Project Managers

The MPCA and Nutting shall each designate a Project Manager and Alternate (hereinafter jointly referred to as Project Manager) for the purposes of overseeing the implementation of this

Order. Within ten (10) days of the effective date of this Order, Nutting shall notify the MPCA Commissioner of the name and address of its Project Manager and Alternate. The MPCA Project Manager is Frank X. Wallner; the MPCA Alternate is Sandra Forrest. Either party may change its designated Project Manager by notifying the other party, in writing, of the change. To the maximum extent possible, communications between Nutting and the MPCA concerning the terms and conditions of this Order shall be directed through the Project Managers. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are appropriately disseminated and processed.

For the purpose of overseeing and implementation of this Order, the Project Managers shall have the authority to (1) take samples or direct that samples be taken; (2) direct that work stop for a period not to exceed 72 hours whenever a Project Manager determines that activities at the Nutting Site may create a danger to public health or welfare or the environment; (3) observe, take photographs and make such other reports on the progress of the work as the Project Manager deems appropriate; (4) review records, files and documents relevant to this Order; and (5) make or authorize minor field modifications in the RA(s) or in techniques, procedures or design utilized in carrying out this Order which are necessary to the completion of response actions. Any field modifications shall be approved orally by both Project Managers. Within seventy-two (72) hours following the modification, the

Project Manager who requested the modification shall prepare a memorandum detailing the modification and the reasons therefor and shall provide or mail a copy of the memorandum to the other Project Manager.

The MPCA and Nutting Project Managers shall either be on-site or available on call during all hours of work at the Nutting Site. The absence of any Project Manager from the Nutting Site shall not be cause for stoppage of work.

XIV.

Sampling and Data Availability

The MPCA Commissioner and Nutting shall make available to each other the results of sampling, tests or other data generated by either party, or on their behalf, with respect to the implementation of this Order. At the request of the MPCA Project Manager, Nutting shall allow split or duplicate samples to be taken by the MPCA during sample collection conducted during the implementation of this Order. Nutting's Project Manager shall endeavor to notify the MPCA Project Manager not less than ten (10) days in advance of any sample collection. If it is not possible to provide ten (10) days prior notification, Nutting shall notify the MPCA Project Manager as soon as possible after becoming aware that samples will be collected.

XV.

Retention of Records

Nutting shall preserve for a minimum of three (3) years after termination of this Order all records and documents in its

possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the presence of hazardous substances at the Nutting Site or to the implementation of this Order despite any document retention policy to the contrary.

XVI.

Access

The MPCA or its authorized representatives shall have authority to enter the Nutting Site at all reasonable times for the purposes of inspecting records, operating logs, contracts and other documents relevant to implementation of this Order; reviewing the progress of Nutting in implementing this Order; conducting such tests as the MPCA Commissioner or MPCA Project Manager deem necessary; and verifying the data submitted to the MPCA by Nutting. If records required to be retained under this Order are kept at a location other than the Nutting Site, the MPCA or its authorized representatives shall have access to such other location at all reasonable times for the purposes of inspecting the records. Nutting shall honor all reasonable requests for such access by the MPCA conditioned only upon presentation of proper credentials.

Nutting shall use its best efforts to obtain access to property not owned by Nutting upon which Nutting, its contractors, and the MPCA will be required to enter or conduct work in order to carry out the terms of this Order. Nutting shall be responsible

for restoring to substantially its original condition any property to which access has been granted. Access agreements obtained by Nutting under this Part shall provide authority for Nutting and its assigns, the MPCA, and their authorized employees, agents or representatives to enter the Nutting Site and all other property upon which work is to be done under this Order at all reasonable times for the purposes of: implementing the RAP; reviewing the progress of implementation of the RAP; conducting such tests as the MPCA Commissioner or his Project Manager or Nutting's Project Manager deem necessary; and verifying data submitted.

With respect to property upon which monitoring wells, pumping wells, or treatment facilities or other response actions are located the access agreements shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provision for the continued operation of the monitoring wells, pumping well or treatment facilities or other response actions installed on the property pursuant to this Order. Access agreements shall also provide that the owners of the property subject to the access agreement shall notify Nutting and the MPCA Commissioner, by certified mail, prior to any conveyance of the property, of the owners' intent to convey any interest in the property and of the provisions made for continued access. No such conveyance shall occur for at least thirty (30) days after receipt of such notice.

If Nutting is unable to obtain access using its best efforts, the MPCA agrees to use its authority under the statutes and regulations it administers to assist Nutting, its contractors, employees, or assigned in obtaining access to property necessary for the implementation of this Order. If Nutting, its contractors, employees, agents or assigns shall be designated agents of the State in order to obtain access under Minn. Stat. § 115B.17, subd. 4, such designation shall be for the sole purpose of obtaining access to property for purposes of taking investigative or response actions necessary for the implementation of this Order. In the event of such designation, Nutting and its assigns shall idemnify and save and hold the State, its agents, and employees harmless from any and all claims or causes of actions arising from or on account of the performance of such investigative or response actions by Nutting, its contractors, employees, agents or assigns.

XVII.

Other Claims

Nothing herein is intended to bar or release any claims, causes of action or demands in law or equity by or against any person, firm, partnership or corporation not a signatory to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, disposal or release of any hazardous substances at, to, or from the Nutting Site.

The MPCA shall not be held as a party to any contract entered into by Nutting to implement the requirements of this Order.

XIII.

Other Applicable Laws

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. In the event there is a conflict in the application of federal or state or local laws or regulations, the more stringent of the conflicting provisions shall apply.

XIX.

Confidential Information

Nutting may assert a business confidentiality claim covering all or part of the information requested by this Order pursuant to Minn. Stat. §§ 13.03, 13.37, 115B.17, Subd. 5, and 116.075. Analytical data shall not be claimed as confidential by Nutting. Information determined to be confidential by the MPCA Commissioner shall be afforded protection as provided in Minn. Stat. Ch. 13 and §§ 115B.17, Subd. 5, and 116.075. If no such claim accompanies the information when it is submitted to the MPCA Commissioner, the information may be made available to the public by the MPCA Commissioner without further notice to Nutting.

XX.

Recovery of Expenses

Nutting shall pay into the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of Minnesota the sum of Seven Thousand Dollars ($7,000) as reimbursement of the MPCA's past (since January 1, 1987) and future expenses incurred in connection with the Nutting Site. Payment of this sum shall be in full and complete satisfaction of all past monetary claims of the MPCA. Payment shall be made as follows: Two Thousand Dollars ($2,000) within thirty (30) days of the effective date of this order; One Thousand Dollars ($1,000) within six (6) months of the effective date of this order; Two Thousand Dollars ($2,000) by December 31, 1988, and; Two Thousand Dollars ($2,000) by December 31, 1989. Payments shall be sent to John Retzer, Accounting Director, and a copy of the letter which accompanied payment shall be sent to the MPCA Project Manager.

XXI.

Liability Insurance

Within 30 days of the effective date of this Order, Nutting shall provide the MPCA Director with current certificates of insurance certifying coverage for general liability with minimum limits of One Million Dollars ($1,000,000) per occurrence, exclusive of legal defense costs, for bodily injury. The insurance coverage shall provide that it cannot be cancelled for any reason except after thirty (30) days notice to the MPCA

Commissioner. These insurance limits are not be construed as maximum limits. Nutting is solely responsible for determining the appropriate amount of insurance it should carry for injuries or damages resulting from its activities in the implementation of this Order.

XXII.

Amendment of Order

This Order may only be amended by a written agreement between Nutting and the MPCA.

XXIII.

Convenant Not to Sue

In consideration for Nutting's performance of the terms and conditions of this Order, and based on the information known to the parties on the effective date of this Order, the MPCA agrees that compliance with this Order shall stand in lieu of any administrative, legal and equitable remedies available to the MPCA regarding implementation of Nutting's Response Actions, and reimbursement of MPCA expenses, except that nothing in this Order shall preclude the MPCA from exercising any administrative, legal and equitable remedies available to it to require additional response actions by Nutting in the event that the implementation of the requirements of this Order are insufficient to remedy the release or threatened release of hazardous substances associated with the Nutting Site.

This Order shall not be construed as releasing Nutting from responsibility or liability for development and implementation of a response action plan or for any response actions, or from responsibility or liability for any matter other than those identified above, which may be required under Minn. Stat. Ch. 115B or any other law to abate or minimize the release or threatened release of hazardous substances associated with the Nutting Site.

XXIV.

Remedies of Parties

The terms of this Order shall be legally enforceable by either party in a court of appropriate jurisdiction.

Nothing in this Order shall waive the MPCA's right to enforce this Order, to take any action authorized by Minn. Stat. Ch. 115B or by any other law should Nutting fail to maintain compliance with this Order or to compel Nutting to comply with an order issued by the Commissioner under Part VIII.

XXV.

Failure to Make Timely Submittals

A. For each week that Nutting fails to make a Submittal to the MPCA Commissioner in accordance with the time schedules contained in the Exhibit to this Order or any other time scheduled approved or modified by the MPCA Commissioner, Nutting shall be obligated to pay into the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of Minnesota, by

check payable to the Minnesota Pollution Control Agency, the sum of two thousand dollars ($2,000).

B. Nutting shall not be liable for payment under this Part if it has submitted to the MPCA Commissioner a timely request for an extension of schedules under Part XXVI of this Order and such request has been granted.

C. Upon determination by the MPCA Commissioner that Nutting has failed to make a Submittal referenced herein, written notice of the failure specifying the provision of the Order which has not been complied with shall be given to Nutting. Nutting retains the right to dispute under Part VIII the factual basis for the MPCA Commissioner's determination that a Submittal has not bee made in a timely fashion.

D. Payments required by this Part shall accrue from the date on which the Submittal was to have been made. Payments required by this Part shall cease to accrue when Nutting delivers the required Submittal to the MPCA Commissioner.

E. Nothing in this Part shall be construed as prohibiting or in any way limiting the ability of the MPCA to seek civil penalties available under Minn. Stat. Ch. 115B or any other law for any noncompliance with this Order except for noncompliance with the schedules for making Submittals.

XVI.

Extensions of Schedules

Extensions shall be granted if requests for extensions are submitted in a timely fashion and good cause exists for

granting the extension. All extensions must be requested by Nutting in writing. The request shall specify the reason(s) why the extension is needed. Extensions shall only be granted for such period of time as the MPCA Commissioner or MPCA Board determines is reasonable under the circumstances. A requested extension shall not be effective until approved by the MPCA Commissioner or MPCA Board.

The MPCA Commissioner may extend the time schedules contained in this order for a period not to exceed ninety (90) days except that if an extension is needed as a result of (1) delays in the issurance of a necessary permit which was timely applied for; (2) judicial review of the issurance, non-issuance or re-issuance of a necessary permit; or, (3) judicial review under Part VIII of this Order, the MPCA Commissioner may extend the time schedules for a longer period. Extensions of greater than ninety (90) days requested for reasons other than the three specified above may be granted under thie Order, but only if approved by the MPCA Board pursuant to Part XXII (Amendment of Order) of this Order.

The burden shall be on Nutting to demonstrate to the satisfaction of the MPCA Commissioner or MPCA Board that the request for the extension has been submitted in a timely fashion and that good cause exists for granting the extension. Extensions shall be granted where Nutting demonstrates that the reason the extension is needed is due to:

(1) Circumstances beyond the reasonable control of Nutting, including delays caused by the MPCA;

(2) Stoppage of work under Part X (Creation of Danger) which work stoppage was not the result of any noncompliance by Nutting with this Order or the Exhibits thereto;

(3) Review resulting from the good faith invocation by Nutting of Part VIII of this Order, which review results in delays in implementation of this Order making it impossible for Nutting to meet the required schedule(s); and,

(4) Delays which are directly attributable to any changes in permit terms or conditions or refusal to issue a permit needed to implement the requirements of this Order, as contemplated under Part IX (Permits) of this Order, if Nutting filed a timely application for the neccesary permit.

XXVII.

Conveyance of Title

No conveyance of title, easement, or other interest in those portions of the Nutting Site on which any containment system, treatment system, monitoring system or other response actions provided for under Exhibit A are installed or implemented pursuant to this Order shall be consummated by Nutting without provision for continued maintenance of any such system or other response actions. At least sixty (60) days prior to any conveyance, Nutting shall notify the MPCA Commissioner by registered mail of the provisions made for the continued operation

and maintenance of any response actions or system installed or implemented pursuant to this Order.

XXVII.

Financial Responsibility

Within thirty (30) days of the effective date of this Order, Nutting shall submit to the MPCA Commissioner, for review and approval, financial assurance guaranteeing performance of the work specified in Exhibit A to this Order. Financial assurance shall be in a form that meets the requirements for financial assurance for corrective action set forth at Minn. Rules Parts 7045.0514 and 7045.0524.

XXIX.

Successors

This Order shall be binding upon Nutting, its successors and assigns, and upon the MPCA, its successors and assigns.

XXX.

Termination

The provisions of this Order shall be deemed satisfied and terminated upon receipt by Nutting of written notice from the MPCA Commissioner that Nutting has demonstrated, to the satisfaction of the MPCA, that all the terms of this Order have been completed.

XXXI.

Effective Date

This Order is effective upon the date that the MPCA executes this Order.

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the matter of
Nutting Truck and Caster Hazardous Waste Site

RESPONSE ORDER
BY CONSENT

Proceedings Under Sections 17
and 18 of the Minnesota
Environmental Response and
Liability Act, Minn. Stat. Ch. 115B.

Based on the information available to the parties on the effective date of this RESPONSE ORDER BY CONSENT, and without trial or adjudication of any issues of fact or law, the parties hereto agree and it is hereby ordered as follows:

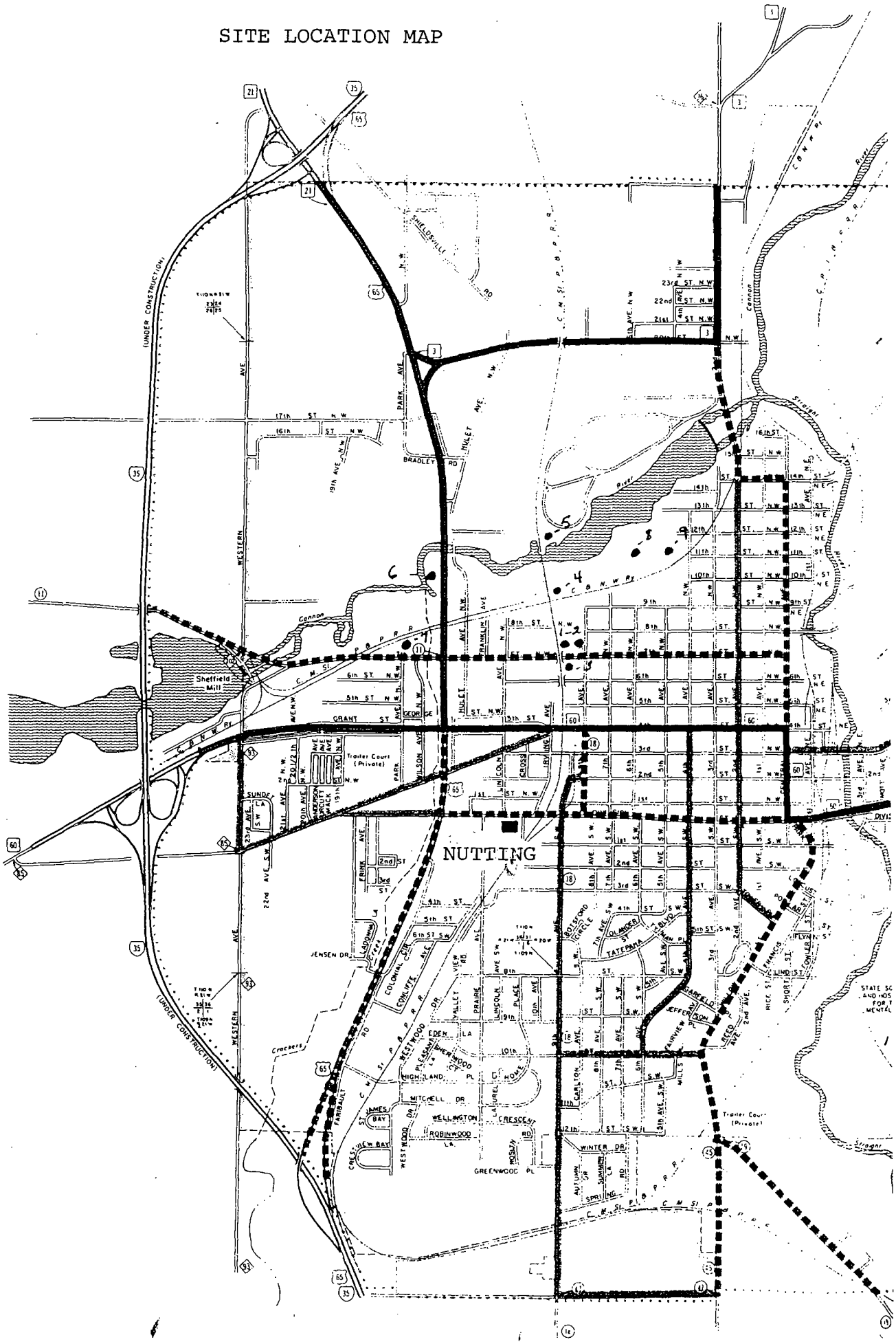
I.

Jurisdiction

This RESPONSE ORDER BY CONSENT (Order) is issued pursuant to the authority vested in the Minnesota Pollution Control Agency (MPCA) by the Environmental Response and Liability Act (ERLA), Minn. Stat. Ch. 115B, and by Minn. Stat. Chs. 115 and 116.

On the basis of the results of the testing and analyses described in the Statement of Facts, infra, and MPCA files and records, the MPCA has determined that (1) the Nutting Truck and Caster Hazardous Waste Site located in Faribault, Minnesota (Nutting Site) constitutes a facility within the meaning of Minn. Stat. § 115B.02, Subd. 5; (2) the wastes and substances found or disposed of at the Nutting Site are hazardous substances within the meaning of Minn. Stat. § 115B.02, Subd. 8 and 9; (3) there

SITE LOCATION MAP



LOCATION MAP

The Nutting Company
Faribault, Minnesota